

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DAMON ALLGIRE,

Plaintiff,

No. CIV S-04-1680 MCE GGH P

vs.

WARDEN R.A. CASTRO, et al.,

Defendants.

FINDINGS & RECOMMENDATIONS

On September 26, 2005, defendants filed a motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6) and nonenumerated Fed. R. Civ. P. 12(b), which defendants re-served on October 11, 2005 upon plaintiff at his prior address. Pursuant to the court's order, filed on December 22, 2005, directing defendants to re-serve plaintiff, plaintiff having filed a notice of change of address on November 9, 2005, defendants once again re-served plaintiff, on December 27, 2005, at his most recent address. Plaintiff has not opposed the motion.

Local Rule 78-230(m) provides in part: "Failure of the responding party to file written opposition or to file a statement of no opposition may be deemed a waiver of any opposition to the granting of the motion" On July 21, 2005, plaintiff was advised of the requirements for filing an opposition to a motion to dismiss and that failure to oppose such a motion may be deemed a waiver of opposition to the motion.

1 Accordingly, plaintiff's failure to oppose should be deemed a waiver of
2 opposition to the granting of the motion.

3 IT IS HEREBY RECOMMENDED that:

- 4 1. Defendants' September 26, 2005, motion to dismiss be granted; and
5 2. This action be dismissed.

6 These findings and recommendations are submitted to the United States District
7 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty
8 days after being served with these findings and recommendations, any party may file written
9 objections with the court and serve a copy on all parties. Such a document should be captioned
10 "Objections to Magistrate Judge's Findings and Recommendations." Any reply to the objections
11 shall be served and filed within ten days after service of the objections. The parties are advised
12 that failure to file objections within the specified time may waive the right to appeal the District
13 Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

14 DATED: 3/29/06

/s/ Gregory G. Hollows

UNITED STATES MAGISTRATE JUDGE

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